

# **Exhibit 3**

Anthony Brown

Page 1059

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether :  
("MTBE") :  
Products Liability Litigation :  
: MDL No. 1358 (SAS)  
: \_\_\_\_\_ :  
: :  
This document relates to the :  
following case: :  
: :  
Orange County Water District v. :  
Unocal Corp., et al., 04 CIV. 4968 :  
(SAS) : Pages 1059-1283  
: \_\_\_\_\_ :

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FEBRUARY 1, 2012

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Videotaped Deposition of ANTHONY BROWN,  
EXPERT WITNESS, VOLUME VI, held at Latham & Watkins, at  
650 Town Center Drive, Suite 2000, Costa Mesa,  
California, commencing at 10:17 a.m., on the above date,  
before Kimberly S. Thrall, a Registered Professional  
Reporter and Certified Shorthand Reporter.

Golkow Technologies, Inc.  
877.370.3377 ph | 917.591.5672 fax  
deps@golkow.com

## Anthony Brown

<p style="text-align: right;">Page 1064</p> <p>1 Giuliani for the Valero defendants.</p> <p>2 MR. ORLACCHIO: Adam Orlacchio of Blank Rome,</p> <p>3 LLC for Lyondell Chemical and ARCO Chemical.</p> <p>4 THE VIDEOGRAPHER: Is there anybody --</p> <p>5 MR. ANDERSON: Okay.</p> <p>6 THE VIDEOGRAPHER: -- else on the line?</p> <p>7 Counsel will be noted on the stenographic record.</p> <p>8 The court reporter is Kim Thrall, and she will</p> <p>9 now reswear in the witness.</p> <p>10</p> <p>11 ANTHONY BROWN</p> <p>12 having been first duly sworn, testified as follows:</p> <p>13</p> <p>14 EXAMINATION RESUMED</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Good morning, Mr. Brown. How are you?</p> <p>17 A. Good. How are you, Mr. Anderson?</p> <p>18 Q. I'm doing well. So we meet again.</p> <p>19 A. We do indeed.</p> <p>20 Q. I am here to ask questions about three stations</p> <p>21 and probably some background questions that may apply to</p> <p>22 other aspects of your retention, but not station</p> <p>23 specific other than the Unocal 5226, the</p> <p>24 ConocoPhillips 5792, and the World Oil 39 as listed on</p> <p>25 what I believe is your summary chart that was previously</p>	<p style="text-align: right;">Page 1066</p> <p>1 THE WITNESS: In general, yes. The -- there</p> <p>2 may be additional opinions contained within my expert</p> <p>3 reports. And in addition in response obviously to</p> <p>4 certain questions during the deposition, I may have to</p> <p>5 develop new opinions or perhaps revise existing</p> <p>6 opinions. And I've made the clarification that where an</p> <p>7 opinion that's presented on Exhibit 36 is perhaps in</p> <p>8 conflict with an opinion in the report, the opinion on</p> <p>9 Exhibit 36 takes precedence and essentially "trumps" --</p> <p>10 I think the word was used -- any opinion within the</p> <p>11 reports.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Okay. So you consider 36 to be, at least as</p> <p>14 far as the final conclusions, superior to the text in</p> <p>15 the report if there's a conflict?</p> <p>16 A. That is correct.</p> <p>17 Q. Okay. And as I was saying, I'm going to ask</p> <p>18 you about three stations. But as a general matter, I</p> <p>19 understand you've been retained by Orange County Water</p> <p>20 District or its counsel or both to be a testifying</p> <p>21 expert in the case.</p> <p>22 I wanted to know whether you have been</p> <p>23 approached by or had discussions with Orange County</p> <p>24 Water District about actually doing or supervising the</p> <p>25 completion of any of the work at any or all of the</p>
<p style="text-align: right;">Page 1065</p> <p>1 marked as Exhibit 36.</p> <p>2 Do you have a copy of that summary chart with</p> <p>3 you?</p> <p>4 A. I -- I do indeed.</p> <p>5 Q. We'll probably refer to it from time to time.</p> <p>6 And I don't know if you have a copy with the exhibit</p> <p>7 stamp on it, but I have an exhibit sticker that is dated</p> <p>8 January 2nd of 2012. So that was probably your first</p> <p>9 date. I don't know.</p> <p>10 A. The third day.</p> <p>11 MS. O'REILLY: No. 29th was the --</p> <p>12 MR. ANDERSON: Okay.</p> <p>13 MS. O'REILLY: That was the third day.</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. And just for my background, so I understand,</p> <p>16 Exhibit 36 was something prepared by you, right?</p> <p>17 A. Correct.</p> <p>18 Q. And it was designed to summarize in tabular</p> <p>19 form using symbols that can be referenced in the lower</p> <p>20 left-hand corner, the basic opinions that you have</p> <p>21 formed, if you have formed them, with respect to each of</p> <p>22 the sites that are listed on this exhibit, right?</p> <p>23 MS. O'REILLY: Objection. This was asked and</p> <p>24 answered. Misstates the purpose of chart.</p> <p>25 Go ahead.</p>	<p style="text-align: right;">Page 1067</p> <p>1 stations that are mentioned in your report where you</p> <p>2 have expressed an opinion that work needs to be done?</p> <p>3 MS. O'REILLY: And I'm going to object to the</p> <p>4 extent that -- and instruct the witness not to answer to</p> <p>5 the extent that goes into attorney-client privileged</p> <p>6 communication.</p> <p>7 THE WITNESS: To determine whether it was an</p> <p>8 attorney-client privileged -- attorney-client privileged</p> <p>9 communication, that would require me to make a legal</p> <p>10 conclusion, so perhaps I can --</p> <p>11 MR. ANDERSON: Didn't you want to add that</p> <p>12 objection?</p> <p>13 MS. O'REILLY: Well, I'm just indicating that</p> <p>14 I -- it -- that if he's had any discussions with Orange</p> <p>15 County regarding performance of any work, those would be</p> <p>16 subject to attorney-client privileged communication at</p> <p>17 this point.</p> <p>18 MR. ANDERSON: Yeah. And I -- I may disagree</p> <p>19 with the basis of the objection, but let's go ahead and</p> <p>20 get whatever answer you can give me, subject to</p> <p>21 Ms. O'Reilly's objection.</p> <p>22 MS. O'REILLY: Are you indicating you can't --</p> <p>23 you need to confirm with me before you can answer?</p> <p>24 THE WITNESS: I should just check --</p> <p>25 MR. ANDERSON: Let's take a short break.</p>

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FEBRUARY 6, 2012

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## Anthony Brown

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<p>1 THE WITNESS: Unfortunately, I've not had an</p> <p>2 opportunity to review the scope of the excavation nor</p> <p>3 any of the analytical results that have been generated</p> <p>4 as part of that activity.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Okay. Have you or your staff communicated with</p> <p>7 Orange County Health Care Agency regarding your</p> <p>8 conclusions with respect to Chevron 9-5568?</p> <p>9 MS. O'REILLY: Vague. Ambiguous. Overbroad.</p> <p>10 THE WITNESS: Not that I'm aware of.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Have you or your staff communicated with the</p> <p>13 Regional Water Quality Control Board regarding your</p> <p>14 conclusions concerning Chevron 9-5568?</p> <p>15 A. Again --</p> <p>16 MS. O'REILLY: Same objections.</p> <p>17 THE WITNESS: -- not that I'm aware of.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. Do you have any information that OCWD or its</p> <p>20 agents have communicated with these regulators regarding</p> <p>21 your conclusions concerning Chevron 9-5568?</p> <p>22 MS. O'REILLY: And object to the extent it</p> <p>23 calls for attorney-client privileged communication.</p> <p>24 Go ahead.</p> <p>25 THE WITNESS: Again, not that I'm aware of.</p>	<p>1 its agents have communicated with the environmental</p> <p>2 consultants who have worked at Chevron 9-5568 regarding</p> <p>3 your opinions concerning this site?</p> <p>4 MS. O'REILLY: Same objections.</p> <p>5 THE WITNESS: Same answer. Again, not that I'm</p> <p>6 aware of.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Have you contacted the water purveyors in the</p> <p>9 area surrounding Chevron 9-5568 about your opinions</p> <p>10 concerning this site?</p> <p>11 MS. O'REILLY: Same objections.</p> <p>12 THE WITNESS: I have not, no.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. Do you think any warning should be issued to</p> <p>15 the public concerning the alleged contamination at</p> <p>16 Chevron 9-5568?</p> <p>17 MS. O'REILLY: Outside the scope of his</p> <p>18 designation. Calls for speculation. Assumes facts.</p> <p>19 Lacks foundation. Incomplete hypothetical. Vague.</p> <p>20 Ambiguous. Overbroad.</p> <p>21 THE WITNESS: That's not something I was asked</p> <p>22 to evaluate as part of my retention in this matter.</p> <p>23 BY MR. ANDERSON:</p> <p>24 Q. And is that true for all of the sites that you</p> <p>25 looked at, you don't have an opinion as to whether or</p>
Page 1322	Page 1324
<p>1 BY MR. ANDERSON:</p> <p>2 Q. Have you or your staff communicated with</p> <p>3 Chevron outside of this litigation regarding your</p> <p>4 conclusions with respect to this station?</p> <p>5 MS. O'REILLY: Vague. Ambiguous. Overbroad.</p> <p>6 THE WITNESS: Not that I'm aware of.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Have you or your staff communicated with the</p> <p>9 environmental consultants overseeing the remediation at</p> <p>10 Chevron 9-5568 regarding your opinions concerning this</p> <p>11 site?</p> <p>12 MS. O'REILLY: Asked and answered. Vague and</p> <p>13 ambiguous.</p> <p>14 THE WITNESS: Again, not that I'm aware of.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q. Do you have any information that OCWD or its</p> <p>17 agents have communicated with Chevron outside of this</p> <p>18 litigation regarding your opinions concerning</p> <p>19 Chevron 9-5568?</p> <p>20 MS. O'REILLY: Object to the extent it calls</p> <p>21 for attorney-client privilege. Vague and ambiguous.</p> <p>22 Go ahead.</p> <p>23 THE WITNESS: Again, not that I'm aware.</p> <p>24 BY MR. ANDERSON:</p> <p>25 Q. And do you have any information that OCWD or</p>	<p>1 not additional -- excuse me -- you don't have an opinion</p> <p>2 as to whether warnings need to be issued to the public</p> <p>3 about the alleged contamination concerning any of the</p> <p>4 sites you looked at?</p> <p>5 MS. O'REILLY: Misstates testimony. Outside</p> <p>6 the scope of his designation. Argumentative. Assume</p> <p>7 facts. Lacks foundation.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: I believe the answer would be the</p> <p>10 same, that it's not something that I was asked to offer</p> <p>11 an opinion on.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q. Do you have an opinion, though, today on that</p> <p>14 issue?</p> <p>15 MS. O'REILLY: Same objection. Exceeds the</p> <p>16 scope of his designation. It's vague, ambiguous,</p> <p>17 overbroad as to "warning." Assumes facts. Lacks</p> <p>18 foundation.</p> <p>19 Go ahead if you can.</p> <p>20 THE WITNESS: As I sit here, I would not want</p> <p>21 to come up with an instantaneous opinion on that. That</p> <p>22 is something that would require me to consider more</p> <p>23 in -- more deeply.</p> <p>24 BY MR. ANDERSON:</p> <p>25 Q. Do you have any opinions concerning</p>

## Anthony Brown

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<p>1 Chevron 9-5568 that we have not discussed or that are</p> <p>2 not in Exhibit 36, your expert report, Appendix B25, or</p> <p>3 your rebuttal report?</p> <p>4 MS. O'REILLY: Vague. Ambiguous. Overbroad.</p> <p>5 THE WITNESS: Not that I'm aware of. And,</p> <p>6 again, the only caveat I would provide is if there are</p> <p>7 any conflicts between the opinions I've provided in</p> <p>8 Exhibit 36, and anything that can be construed as an</p> <p>9 opinion in my summary report, the Exhibit 36 opinions,</p> <p>10 would be the most current and would take precedence over</p> <p>11 any conflicting opinions presented in the summary</p> <p>12 report.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. Okay. Do you have any of the maps where you</p> <p>15 have drawn the contours of the plumes here?</p> <p>16 A. Yes. For this station, Chevron 5568, on</p> <p>17 Figures 4 and Figure 5 from my expert report, I did</p> <p>18 contour both MTBE and TBA concentration at various time</p> <p>19 steps. I'll provide that to you. Excuse me.</p> <p>20 Q. What I would like to do is do the same thing we</p> <p>21 did last time, which is a Post-It, and then get these</p> <p>22 back to you. Is that all right?</p> <p>23 A. That's correct.</p> <p>24 MR. ANDERSON: Is that fine with you, Tracey?</p> <p>25 MS. O'REILLY: That's fine. And just for the</p>	<p>1 but the majority of the stations there was often cases</p> <p>2 where data was only present down to a 5-part-per-billion</p> <p>3 level, the -- because the 5 part per billion was the</p> <p>4 detection limit that was used by the laboratory.</p> <p>5 So I -- for most of the figures, I kept it to a</p> <p>6 10, a 100, 1,000 contour. There were some -- some</p> <p>7 cases, and I think particularly ARCO 1912, where I</p> <p>8 actually did use a 1 contour. And there may have been</p> <p>9 some other instances, but for the majority I believe I</p> <p>10 just used the 10, 100, and 1,000.</p> <p>11 MR. ANDERSON: I'm ready to move on to</p> <p>12 Beacon Bay. We haven't been going an hour, but I know</p> <p>13 it may take a second for you to get this stuff out. Do</p> <p>14 you want to take five minutes?</p> <p>15 THE WITNESS: That would be good.</p> <p>16 MS. O'REILLY: Yeah.</p> <p>17 THE WITNESS: Yeah, and I can pull the right</p> <p>18 reports out.</p> <p>19 MR. ANDERSON: Okay. So the time it looks to</p> <p>20 me like -- well, they're all different. Every clock is</p> <p>21 different. Let's try to keep five minutes. I think we</p> <p>22 only have a couple more sites left.</p> <p>23 MS. O'REILLY: That's fine.</p> <p>24 THE VIDEOGRAPHER: With the approval of</p> <p>25 counsel, we're going off the record. The time is</p>
Page 1326	Page 1328
<p>1 record, we have produced these documents to defendants.</p> <p>2 MR. ANDERSON: Unfortunately, as I'm sure you</p> <p>3 can appreciate, some of us have been living out of</p> <p>4 suitcases for a while, so we can't get copies of</p> <p>5 everything. But it's 137.</p> <p>6 (Brown Exhibit 137 was marked.)</p> <p>7 THE WITNESS: Could we just note that I've not</p> <p>8 received my previous originals back yet?</p> <p>9 MR. ANDERSON: Okay.</p> <p>10 MS. O'REILLY: Sandy went on vacation.</p> <p>11 THE WITNESS: Oh, okay.</p> <p>12 MS. O'REILLY: I told her that it was okay to</p> <p>13 send them to you when she got back.</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. In these plumes -- and I think this is true for</p> <p>16 the other sites -- you draw the 10 and 100</p> <p>17 isoconcentration range, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Is there any reason you didn't go to 5 parts</p> <p>20 per billion for the isoconcentration range?</p> <p>21 MS. O'REILLY: Assumes facts. Lacks</p> <p>22 foundation.</p> <p>23 THE WITNESS: I tried to use just order of</p> <p>24 magnitude concentrations, so the 10, the 100, the 1,000.</p> <p>25 At some of the stations, I could have drawn a 1 contour,</p>	<p>1 approximately 2:59 p.m.</p> <p>2 (Recess.)</p> <p>3 THE VIDEOGRAPHER: With the approval of</p> <p>4 counsel, we are back on the record. The time is</p> <p>5 approximately 3:07 p.m.</p> <p>6 (Brown Exhibit 138 was marked.)</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. And I wanted to mark 138 for you. And this is</p> <p>9 still dealing with 9-5568. I just had a couple of quick</p> <p>10 questions for you about it. This is a December 1st,</p> <p>11 2011, SAIC report regarding the site excavation final</p> <p>12 report for Chevron 9-5568. For the record, I think that</p> <p>13 this is an extract of the entire document that was</p> <p>14 prepared.</p> <p>15 Have you reviewed this before?</p> <p>16 A. No, I've not.</p> <p>17 Q. If we turn to page 7 of 10, under the</p> <p>18 "Conclusions," five lines down, it begins the sentence</p> <p>19 "The objective." "The objective of the excavation (to</p> <p>20 remove the majority of residual source mass of petroleum</p> <p>21 hydrocarbons in soil to substantially reduce continued</p> <p>22 leaching into groundwater) has been achieved based on a</p> <p>23 comparison of preexcavation to postexcavation soil</p> <p>24 sample results."</p> <p>25 Do you see that?</p>

12 (Pages 1325 to 1328)